

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS

| | | |
|------------------------------------|---|-------------------------|
| EMMITT T. TINER, K51116, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | Law No.: 08-823-MJR-DGW |
| |) | |
| LINDA RUNGE and DR. ALFONSO DAVID, |) | |
| |) | |
| Defendants. |) | |

MOTION TO DISMISS PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 41(a)

NOW COME the Defendants, ALFONSO C. DAVID, M.D., and LINDA RUNGE, by THERESA M. POWELL, of HEYL, ROYSTER, VOELKER & ALLEN, their attorneys, and for their Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 41(a), state:

1. On May 25, 2010, undersigned counsel had a conversation with Pat Rice, an attorney in Wheaton, Illinois.

2. Mr. Rice advised me that he represents Mr. Emmitt Tiner in a Court of Claims case arising from this same set of facts set forth in this cause of action.

3. Mr. Rice further advised me that he and his client do not wish to pursue this cause of action in the federal courts against the undersigned Defendants.

4. Mr. Rice requested that I file a Motion to Dismiss this claim and that he and his client would not oppose the motion. He also indicated that he did not wish to enter his appearance in this matter as he did not wish to pursue this claim and has advised his client of the same.

5. Accordingly, Defendants pray that this Court will dismiss Plaintiff's claim voluntarily as represented to undersigned counsel by Plaintiff's attorney.

s/ THERESA M. POWELL
Attorney for Defendants
IL ARDC #: 6230402
Heyl, Royster, Voelker & Allen
Suite 575 National City Center
P. O. Box 1687
Springfield, IL 62705-1687
217.522.8822 Phone
217.523.3902 Fax
Email: tpowell@heyloyster.com

CERTIFICATE OF SERVICE

I hereby certify that on May 27, 2010, I electronically filed the foregoing Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 41(a) with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

None

and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants:

Mr. Emmitt T. Tiner
1149 East Lincoln Avenue
Decatur, IL 62521

T. Patrick Rice
Rice & Associates, Ltd.
311 South County Farm Road, Suite A
Wheaton, IL 60187-4523

s/ Theresa M. Powell
Attorney for Defendants
IL ARDC #: 6230402
Heyl, Royster, Voelker & Allen
Suite 575 National City Center
P. O. Box 1687
Springfield, IL 62705-1687
217.522.8822 Phone
217.523.3902 Fax
Email: tpowell@heyloyster.com

TMP/ej
S2313/15620486_1.DOCX